

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Illinois Council of Police,

Charging Party

and

Village of Lyons,

Respondent

Case No. S-CA-12-145-C

COMPLIANCE ORDER

On April 5, 2012, and as amended on April 29, 2012, the Illinois Council of Police (Charging Party or ICOPS) filed an unfair labor practice charge in Case No. S-CA-12-145 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the Village of Lyons (Respondent or Village) engaged in an unfair labor practice within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), *as amended* (Act). On December 18, 2012, the Board issued a complaint setting the case for hearing. On October 28, 2013, Administrative Law Judge Martin Kehoe issued a Recommended Decision and Order (RDO) holding that the Village by its acts and conduct violated Section 10(a)(4), (2) and (1) of the Act. Administrative Law Judge Kehoe directed Respondent to:

1. Cease and desist from:
 - (a) Implementing or giving effect to the Village's April 4, 2012 ordinance regarding the reorganization of the police department;
 - (b) Failing and refusing to bargain in good faith with the Union as to changes set forth in the April 4, 2012 ordinance that affect wages, hours, or terms or conditions of employment of the Village's Commanders;
 - (c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by the Act.
2. Take the following affirmative action designed to effectuate the policies of the Act:

- (a) Rescind any changes made pursuant to the April 4, 2012 ordinance that affect wages, hours, or terms or conditions of employment of the Village's Commanders made on or after April 4, 2012 and any other such changes made thereafter;
- (b) Make whole any employees in the bargaining unit represented by the Union for all losses incurred as a result of any changes made pursuant to the April 4, 2012 ordinance that affect wages, hours, or terms or conditions of employment of those employees, including back pay plus interest at seven percent per annum, as allowed by the Act;
- (c) Prior to implementation, give reasonable notice to the Union of any proposed changes that affect wages, hours, or terms or conditions of employment of employees represented by the Union and, upon request of the Union, bargain in good faith over those changes;
- (d) Preserve and, upon request, make available to the Board or its agents for examination and copying, all records, reports, and other documents necessary to calculate the amount of back pay due under the terms of this decision;
- (e) Post, at all places where notices to employees are regularly posted, copies of the notice attached hereto and marked "Addendum." Copies of this notice shall be posted, after being duly signed, in conspicuous places and be maintained for a period of 60 consecutive days. The Village will take reasonable efforts to ensure that the notices are not altered, defaced, or covered by any other material;
- (f) Notify the Board in writing, within 20 days from the date of this order, of the steps Village has taken to comply herewith.

Respondent did not appeal Judge Kehoe's decision and on or about November 5, 2013 in a letter addressed to the Board, Respondent outlined the steps it had taken to comply with the Order. In the letter, Respondent stated it had complied with all of Judge Kehoe's Order with the exception of posting the Notice, which had not been included with the Order.

On or about November 19, 2013, the Illinois Council of Police (ICOP) contacted Respondent requesting documentation the Village had rescinded the ordinance establishing the Deputy Chief rank and abolishing the rank of Police Commander. ICOP's reference to rescinding the ordinance is in apparent reference to part 2(a) of the Administrative Law Judge's Order. In part 2(a) of Judge Kehoe's Order, Respondent was directed to "Rescind any changes made pursuant to the April 4, 2012 ordinance that affects wages, hours, or terms or conditions of employment of the Village's Commanders made on or after April 4, 2012 and any other such changes made thereafter." ICOPs contend the Order directed Respondent to rescind the ordinance while Respondent argues the Order only requires the return to the status quo of those changes that were implemented as a result of the ordinance. Respondent asserts there

were no changes implemented as a result of the ordinance and therefore a make whole award was unwarranted for this aspect of the unfair labor practice charge.

Subsequently, after not receiving a response to its request for documentation that the ordinance had been rescinded, ICOP, on or about December 18, 2013 filed a petition seeking enforcement of the Administrative Law Judge's Recommended Decision and Order. The Union cited Respondent's failure to post the Notice and rescind the ordinance as the basis for a finding of non-compliance. On January 17, 2014, the General Counsel issued a Board Order acknowledging that no exceptions had been filed by either party in the matter and issued a non-precedential Order final and binding on the parties.

I. DISCUSSION

Under Section 80 Ill. Admin. Code, Section 1220.80 of the Board's Rules, the compliance officer is directed to investigate the Petition for Enforcement and issue an order dismissing the Petition, directing specifically the actions to be taken by Respondent and Charging Party, or set the matter for hearing before an Administrative Law Judge. The general principle underlying the compliance report is simply to restore discriminatees to the position they would have been in absent the commission of unfair labor practices. In determining a make whole remedy, the Board's function is to put the Charging Party in the same position it would have been in had the unfair labor practices not been committed. Village of Glendale Heights, 1 PERI ¶2019 (ISLRB 1985). See State of Illinois, Dept. of Correction, Gerald Morgan, 3 PERI ¶2057, IL SLRB 1987; City of Crest Hill, 4 PERI ¶2030 IL SLRB 1988). Accordingly, the compliance officer must determine whether Respondent has fully complied with the Board's order and whether Respondent needs to take additional steps.

To facilitate compliance, since Respondent had acknowledged not having posted the Notice, I sent Respondent a Notice to Employees and requested that the Notice be posted for 60 consecutive days at multiple locations. In addition, I informed Respondent that it had not yet complied with the Order and that Respondent should take the necessary steps to rescind the ordinance and notify the Union and myself by March 13, 2014 of the steps it had taken to comply with the Order. Respondent failed to contact the undersigned or the Union to report whether compliance had occurred. On April 6, 2014, ICOP emailed

the undersigned requesting that sanctions be imposed on the Village for a general failure to comply with the Order.

II. ALJ KEHOE RULED RESPONDENT MUST RESCIND ORDINANCE

In essence, Respondent argues that Judge Kehoe did not direct the Village to rescind the ordinance to abolish the police commander rank and replace it with the rank of deputy chief. Respondent appears to dispute, as it did at hearing, that it did not violate the Act because no duties had been taken from or transferred to the commanders since the passage of the ordinance. This argument was dismissed as unpersuasive by Judge Kehoe. The Administrative Law Judge rejected the Village's legal argument on this issue during the hearing. The Village argued that since it had taken no action to implement the ordinance, the Village had not engaged in an unlawful action because no changes occurred to the police commanders' wages, hours or terms and conditions of employment. The hearing officer very clearly addressed this issue in his Recommended Decision and Order and found that the ordinance was an unlawful fait accompli in full force and effect from the moment of passage in that it did not provide a future implementation date. Moreover, the ALJ held, "The sudden creation of the Deputy Chief position, filled or unfilled at the moment, was also a substantial change in the status quo." Emphasis added. It is clear the Order included and directed Respondent to rescind the change to the commanders' conditions of employment which resulted from Respondent's unlawful enactment of the ordinance. To make Charging Party's bargaining Unit whole, Respondent is hereby ordered to immediately rescind the ordinance.

III. NOTICE POSTING

The compliance investigation discovered that a Notice to Employees was not attached to the administrative law judge's order when it issued. To correct the oversight of the missing Notice, I sent Respondent a Notice with instructions to post the Notice and inform the Union and myself as to that posting. The Village has yet to provide evidence of posting or to inform that it had posted the Notice. Once again, I am sending a Notice to Respondent to be posted. Copies of this Notice shall be reproduced by Respondent and posted in conspicuous places, after being duly signed, and be maintained for a period

of 60 consecutive days. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by other material. After posting the Notices, I direct Respondent to provide the Union and the compliance officer in writing the location where the Notices have been posted and the date of the postings.

IV. REQUEST FOR SANCTIONS DENIED

Charging Party requested sanctions for Respondent's failure to comply with the RDO and then later failure to comply with the compliance officer's request for information. The request for sanctions is governed pursuant to Section 1220.90 of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1200-1240. The request for sanctions is denied.

A party that is requesting sanctions must do so by making a Motion for Sanctions and serving the Motion on the party it is seeking the sanctions on. Here, the Union requested sanctions on Respondent by sending an email to the compliance officer and not serving the request on Respondent. The request for sanctions is denied because there is no evidence that it was served on Respondent. However, even if the Union had made proper service, the request for sanctions would have been denied because Motions for Sanctions can only be filed within a specified time frame post-compliance hearing. In the instant matter, I cannot grant the relief sought by the Union. Although sanctionable misconduct can occur during the compliance phase, the request for sanctions at the investigatory stage in a petition for compliance is premature and denied. North Shore Sanitary District, 13 PERI ¶2006 (IL SLRB 1997). Section 1220.90 of the Rules and Regulations of the Illinois Labor Relations Boards, 80 Ill. Admin. Code governs the appropriate time when sanctions can be requested.

V. ORDER

IT IS HEREBY ORDERED that Respondent, within seven (7) business days of service of this Order, shall comply with the above findings and take the following actions noted herein. This Order of the Compliance Officer is an intermediate Order that will become final unless the parties file an appeal with the Illinois Labor Relations Board, within seven (7) business days after service of this Order. Any

such appeal must be in writing, and directed to Jerald S. Post, the Board's General Counsel, and received in the Board's Chicago Office at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeals to this Order are filed, the Order of the Compliance Officer shall become final.

Issued in Springfield, Illinois, this 11th day of April, 2014.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**



**Michael L. Provines
Compliance Officer**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

IT IS HEREBY ORDERED that the Respondent, Village of Lyons, its officers and agents shall:

1. Cease and desist from:
 - a. Implementing or giving effect to the Village’s April 4, 2012 ordinance regarding the reorganization of the police department;
 - b. Failing and refusing to bargain in good faith with the Union as to changes set forth in the April 4, 2012 ordinance that affect wages, hours, or terms or conditions of employment of the Village’s Commanders;
 - c. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - a. Rescind any changes made pursuant to the April 4, 2012 ordinance that affect wages, hours, or terms or conditions of employment of the Village’s Commanders made on or after April 4, 2012 and any other such changes made thereafter;
 - b. Make whole any employees in the bargaining unit represented by the Union for all losses incurred as a result of any changes made pursuant to the April 4, 2012 ordinance that affect wages, hours, or terms or conditions of employment of those employees, including back pay plus interest at seven percent per annum, as allowed by the Act;
 - c. Prior to implementation, give reasonable notice to the Union of any proposed changes that affect wages, hours, or terms or conditions of employment of employees represented by the Union and, upon request of the Union, bargain in good faith over those changes;
 - d. Preserve and, upon request, make available to the Board or its agents for examination and copying, all records, reports, and other documents necessary to calculate the amount of back pay due under the terms of this decision;

This notice shall remain posted for 60 consecutive days at all places where notices to our bargaining unit members are regularly posted.

Date: _____ Village of Lyons
(Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor Springfield, Illinois 62702 (217) 785-3155	160 North LaSalle Street, Suite S-400 Chicago, Illinois 60601-3103 (312) 793-6400
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**THIS IS AN OFFICIAL GOVERNMENT NOTICE
AND MUST NOT BE DEFACED.**
